Petition and Transcript of Record

Supreme Court of the United States

OCTOBER TERM, 1931

No. 62

AMERICAN HIDE AND LEATHER COMPANY,
PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED APRIL 29, 1931

CERTIORARI GRANTED OCTOBER 12, 1931

(35,844)

(35,844)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 922

AMERICAN HIDE AND LEATHER COMPANY, PETITIONER,

vs.

THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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[fol. 1]

IN SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 922

AMERICAN HIDE AND LEATHER COMPANY, Petitioner,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES

The American Hide and Leather Company, a corporation, by its attorneys, prays that a writ of certiorari issue to review the judgment of the Court of Claims of the United States entered in the cause between the above named parties on November 3rd, 1930, not yet reported. Motion for a new trial was, after argument, denied April 6th, 1931, by opinion not yet reported.

Statutes Involved

Revenue Act of 1918

"Title II.—Income Tax

Part I.—General Provisions

Definitions

Sec. 200. That when used in this title—

The term 'taxable year' means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under section [fol. 2] 212 or section 232. The term 'fiscal year' means an accounting period of twelve months ending on the last day of any month other than December. * * *"

Section 212(b) of the Revenue Act of 1918 provides:

"The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; * * *. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 200 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. * * *"

Section 230(a) of the Revenue Act of 1918 provides:

"That, * * * there shall be levied, collected, and paid for each taxable year upon the net income of every corporation a tax at the following rates: * * *."

Section 232 of the Revenue Act of 1918 provides:

"That in the case of a corporation subject to the tax imposed by section 230 the term 'net income' means the gross income as defined in section 233 less the deductions allowed by section 234, and the net income shall be computed on the same basis as is provided in subdivision (b) of section 212 or in section 226."

Section 239 of the Revenue Act of 1918 provides:

"That every corporation subject to taxation under this title and every personal service corporation shall make a return stating specifically the items of its gross income [fol. 3] and the deductions and credits allowed by this title. * * *

Returns made under this section shall be subject to the provisions of sections 226 and 228. When return is made under section 226 the credit provided in subdivision (c) of section 236 shall be reduced to an amount which bears the same ratio to the full credit therein provided as the number of months in the period for which such return is made bears to twelve months."

Section 251 of the Revenue Act of 1918 provides:

"That every collector to whom any payment of any tax is made under the provisions of this title shall upon re-

quest give to the person making such payment a full written or printed receipt, stating the amount paid and the particular account for which such payment was made; * * *."

Statement

This suit was instituted in the Court of Claims of the United States to recover $556,754.72 as an overpayment of income and excess profits tax for the fiscal year beginning July 1, 1919 and ending June 30, 1920. The material facts may be abridged as follows:

The American Hide and Leather Company, a corporation, filed a return for the calendar year 1918, containing a statement of income, deductions and credits from January 1, 1918 to December 31, 1918, upon which a tax of $1,246,271.24 was paid. A similar return for the calendar year 1919 was filed, upon which a tax of $1,113,509.41 was paid. The return filed for the calendar year 1920 disclosed substantial losses.

When the Commissioner of Internal Revenue came to audit these calendar year returns, he finally determined [fol. 4] that as the petitioner kept its books of account on the basis of a fiscal year ending June 30 and on an accrual basis of accounting, he by letter dated November 18, 1925, ordered the petitioner to file returns for the fiscal years, July 1 to June 30 for 1919 and 1920 to 1925 inclusive.

In compliance therewith, the petitioner on January 22, 1926, filed a return for the fiscal year ended June 30, 1919, reporting a total tax liability of $858,205.88. A return was also filed for the fiscal year 1920, disclosing a net loss of $1,739,036.96.

On January 6, 1927 the petitioner received a letter from the Commissioner of Internal Revenue stating that since no return had been filed for the fiscal year 1918, that the Bureau held that the case came within Section 273 (a) of the Revenue Act of 1926, providing that where the taxpayer fails to file a return the amount of the tax may be assessed at any time, and a return for the fiscal year 1918 was requested.

On February 1, 1927 the petitioner filed a return for the period January 1, 1918 to June 30, 1918, disclosing a tax liability of $544,415.86.

A proper claim for refund was duly filed for the fiscal year July 1, 1919 to June 30, 1920. The Government was at all times protected by waivers for all years.

For the period January 1, 1918 to December 31, 1919 the petitioner paid on income accrued during these twenty-four months taxes in the amount of $2,339,780.65, being $1,246,-271.24 for the calendar year 1918 and $1,113,509.41 for the [fol. 5] calendar year 1919. Based on the determination of the Commissioner of Internal Revenue, the tax liability of the petitioner for the fiscal period January 1 to June 30, 1918, was in the amount of $708,068.47 and for the fiscal year July 1, 1918 to June 30, 1919, in the amount of $896,-314.83. The petitioner's tax liability for the eighteen months, as determined by the Commissioner, is $1,604,-383.30.

The Commissioner of Internal Revenue, upon receipt of the fiscal year returns, adjusted the calendar years 1918, 1919 and 1920 income returned and deductions taken to the correct fiscal year periods, but refused to adjust the tax payments thereon in like manner.

The Commissioner accepted the entire amount of $1,246,-271.44 as a payment for the specific period January 1 to December 31, 1918 but subsequently treated it as a payment for the period January 1 to June 30, 1918 even though the tax liability determined by the Commissioner for the latter period was only $708,068.47. The difference between the correct tax liability for the fiscal year 1918 and the amount paid for the calendar year 1918 thereby becomes under the Commissioner's treatment an overpayment for the period January 1 to June 30, 1918.

Likewise, the $1,113,504.41 accepted by the Commissioner as a payment for the calendar year 1919 was subsequently treated as a payment for the fiscal year July 1, 1918 to June 30, 1919. The latter period embraces the six months from July 1 to December 31, 1918, upon the income for which six months taxes were paid under the calendar year [fol. 6] 1918 return, which taxes he had already treated as an overpayment for the fiscal year 1918.

The Commissioner by treating the calendar year 1919 payment as having been made for the fiscal year 1919, has eliminated from the fiscal year 1920 all of the tax paid on the income for the six months from July 1 to December 31, 1919, which six months is part of the fiscal year 1920. The

Commissioner adjusted the income for this six months to the fiscal year 1920. There being no tax liability for the fiscal year 1920 it is apparent that if the tax paid upon the income accrued for the said six months is adjusted to the fiscal year 1920 it will result in a refund to the petitioner of not less than $443,367.61 for the fiscal year 1920.

This action by the Commissioner of Internal Revenue is based on his holding that each calendar year return containing a statement of income, credits and deductions for a period from January 1 to December 31 is a statutory return for a different period, namely for the respective fiscal year ending June 30, and that the tax assessed and paid on each calendar year accruals must be treated as having been assessed and paid for fiscal year accruals.

Specification of Errors

(a) The Court of Claims erred in holding that the sum of $443,367.61 was an overpayment for the fiscal year 1918 and was barred by the Statute of Limitations.

(b) The Court of Claims erred in failing to hold that the sum of $443,367.61 was an overpayment for the fiscal year 1920 and was not barred by the Statute of Limitations.

[fol. 7] (c) The Court of Claims erred in basing the decision in this case on the case of P. L. Mann, 44 Fed. 2d 1005.

Question Presented

When a taxpayer makes a voluntary payment of a tax, which is intended to and does represent, and which the Government so accepts and stipulates in writing did represent, a tax upon income for a specified twelve months' period, can such payment be subsequently treated as having been made for another and different period embracing other and different income?

This question is not only important to the taxpayer but equally so to the Government in the administration of tax law.

Reasons for Granting the Writ

The decision of the Court of Claims is in conflict with the following:

(a) The decision of this Court in Lynch v. Turrish, 247 U. S. 241, in that it disregards the principle that "the purpose of an income tax law was to tax the income for the year that it accrued; in other words, no tax in contemplation of the law accrues upon something except for the year in which that something, * * * earnings, profits, gains or income * * * accrues." (See also Burnet v. Sanford & Brooks, 51 S. Ct. 150.)

(b) The decision of this Court in Fawcus Machine Company v. U. S., 51 S. Ct. 144, wherein it was held that "a corporation cannot claim to have accumulated any net income in any year until provision is made for taxes accrued, based on net income for the same year." (See also Aluminum Castings Company v. Routzahn, 282 U. S. 92; and U. S. v. Anderson, 269 U. S. 442.)

[fol. 8] (c) The decision by the United States Board of Tax Appeals in Paso Robles Mercantile Company v. the Commissioner, 18 B. T. A. 415, wherein it is held that a tax erroneously determined on a calendar year basis must be credited on the tax shown due on a fiscal year basis in proportion to the months in the respective calendar years making up the fiscal year. (Petition to review dismissed by the Circuit Court of Appeals for the Ninth Circuit, November 19, 1930. Published in 1930 Commerce Clearing House Service, Vol. 3, Decision Number 9697.) The Government having decided that no appeal should be taken. (See also Paso Robles Mercantile Company v. the Commissioner, 12 B. T. A. 750; Lowenstein Brothers Garment Co. v. the Commissioner, 13 B. T. A. 446.)

(d) The decision in Commissioner v. Leasing and Building Co., 46 Fed. (2nd) 2, in which it was held that tax due under a specific return for a calendar year cannot be regarded as having been due for a fiscal year.

(e) The decision of this Court in Florsheim Brothers Drygoods Co., Ltd. v. United States, 230 U. S. 453, wherein the Court stated at page 111: "It may be true that the filing of a return which is defective or incomplete under section 239 is sufficient to start the running of the period of limitation; and that the filing of an amended return does not toll the period. But the defective or incomplete

return purports to be a specific statement of the items of income, deductions and credits in compliance with section 239. And, to have that effect, it must honestly and reasonably be intended as such."

(f) With the decisions in United States v. National Tank and Export Company, 45 Fed. (2nd) 1005, (certiorari denied April 20, 1931,) and Paso Robles Mercantile Company v. Commissioner, 33 Fed. (2nd) 53, in that in each of these [fol. 9] cases the final judgments were based upon the principle that a return which does not cover the time or income embraced in the taxpayer's correct taxable year, nor include the information upon which an assessment may be based for the correct taxable year, is not a statutory return. This principle was enunciated in Willingham Loan and Trust Company, 15 B. T. A. 931, and affirmed by the Circuit Court of Appeals, 36 Fed. (2nd) 49, and was not disputed in Burnet v. Willingham Loan and Trust Company, 51 S. Ct. 185. (See also Cantrell and Cochrane, Ltd. v. Commissioner, 19 B. T. A. 16.)

(g) Section 251 of the Revenue Act of 1918 in that the decision of the Court of Claims sanctions a treatment of tax payments which is contrary to the direction and intention of the taxpayer.

Income and Tax Payment Thereon Inseparable—Payment is Not an Overpayment

The defendant admits by stipulation, and the Court of Claims finds as a fact that the petitioner overpaid its taxes in an amount not less than $443,367.61. The petitioner contends that the taxes were overpaid for the fiscal year 1920, for which period a claim for refund was properly filed. The defendant claims that the taxes were overpaid for the fiscal year 1918, for which period a proper claim for refund was not filed within the time prescribed by law.

Petitioner contends that the payment was made for the fiscal year 1920, by reason of the fact that the income upon which the taxes accrued is contained in the fiscal year 1920. It is respectfully submitted that taxes and the income from which they arise are inseparable. Therefore, when the income giving rise to the tax in the instant case was found to be income for the fiscal year 1920, the payment should

[fol. 10], have been treated as a payment for the fiscal year 1920.

Petitioner's contention is further borne out by the fact that the Commissioner of Internal Revenue, upon determining that petitioner's books were kept on a fiscal year basis, adjusted the income, credits and deductions to the respective fiscal years, but did not so adjust the payments. His failure to adjust the payments in the same manner as he adjusted the income violated the principle that tax follows income, and disregarded the expressed intention of the parties when the payments were made, namely, that they were made for the twelve months period from January 1 to December 31.

In order to hold that the Statute of Limitations bars the recovery of the amount agreed to be overpaid, the Commissioner of Internal Revenue adopted the theory that tax payments made for and intended to apply to the period from January 1 to December 31, 1918, became payments for the fiscal period January 1 to June 30, 1918, and that any amount paid for the twelve months calendar year period which exceeded the tax liability determined for the six months fiscal period was an overpayment for such fiscal period.

The Court of Claims in upholding the Commissioner's theory predicates its conclusion that petitioner's overassessment was for the fiscal year 1918 upon the proposition that petitioner's calendar year returns must be regarded as statutory returns for the fiscal years. This Court, in Florsheim Brothers Drygoods Co., Ltd. v. United States, supra, held that a return which does not satisfy the requirements of Section 239 of the Revenue Act of 1918 is not a statutory return. (See also Pilliod Lumber Company v. United States, 51 S. Ct. 297.) In the instant case, petitioner's returns did not comply with Section 239 in that no [fol. 11] calendar year return filed by the petitioner purported to or did cover the twelve months of the taxable (fiscal) year, nor disclosed the income of more than six months of the taxable (fiscal) year. None of the petitioner's calendar year returns filed met the requirements of Section 239, and each was, therefore, a defective return, which, standing alone, is insufficient to constitute a statutory return for the taxable (fiscal) year.

In the case of P. L. Mann v. United States, supra, cited by the Court in petitioner's case, the Court quotes Section 200 of the Revenue Act of 1918 as its authority for holding that a calendar year return must be regarded as a statutory return, stating: "* * * the return, although erroneous, must be treated as a return under the statute, and it can only be treated as a return for a taxable period or year that has ended during the period covered by it."

It is respectfully submitted that petitioner's individual calendar year returns, not being in compliance with Section 239 of the Revenue Act, not only need not but can not be treated as statutory returns for the taxable (fiscal) year. The Court's reliance upon Section 200 of the Revenue Act as its reason for concluding that the calendar year return must be regarded as a return for the fiscal year is founded upon a misinterpretation of that section. Section 200 defines the term "taxable year". It has no relation whatsoever to the nature, scope or requirements of returns which are fully covered in Section 239, and was inserted in the Act merely to explain the distinction between the two types of taxable years contemplated by the income tax law. Further, Section 200, by its own provisions, directs attention to Section 212 of the Revenue Act of 1918 and states that the taxable year shall be either a calendar year or a fiscal [fol. 12] year, depending upon the basis upon which the taxpayer's net income is computed.

Thus, it is pointed out that the proposition that the petitioner's calendar year returns must be regarded as statutory returns for the fiscal years is in error and the conclusion reached by the Court of Claims, based upon this reasoning, is incorrect.

It is further respectfully submitted that even if the theory as to returns were sound, it would still be irrelevant to the question presented in the instant case. The payment of taxes is not made upon a return, but upon the income for the period for which the return is filed. Any theory that treats a calendar year return filed for a period from January 1 to December 31 as a return for another period, cannot destroy the fact that the income reflected by the return actually accrued during the period from January 1 to December 31. It is a fact that the payment in the in-

stant case was made on income from January 1 to December 31, and it is respectfully urged that when a fact and a theory conflict, the fact must prevail.

The decision of the Court of Claims, therefore, is not only founded upon an erroneous premise, arrived at by misinterpretation of Section 200 of the Revenue Act of 1918, unsupported by any accepted rule of law or decision, but, further and fundamentally, it is in error because it supplants a fact with a theory and violates the fundamental principle of income tax law, that tax is dependent upon and arises from income, as enunciated by this Court in Lynch v. Turrish, supra.

The instant case differs inter alia from the P. L. Mann [fol. 13] case, supra, recently decided in the Court of Claims and relied on by that Court in its decision of this case, in that the instant case has for its sole issue the treatment of tax payments on actually accrued income according to the intention of the taxpayer and so accepted by the Government.

Conclusion

It is respectfully submitted that the petition for a writ of certiorari should be granted.

George E. Hamilton, William E. Hayes, Attorneys for Petitioner.

[fol. 1] IN THE UNITED STATES COURT OF CLAIMS

No. J-555

AMERICAN HIDE AND LEATHER COMPANY, a Corporation, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendants

I. PETITION—Filed July 16, 1928

To the Honorable the Court of Claims:

The claimant in the above-entitled cause respectfully represents:

I

That the claimant is a corporation organized and existing under the Laws of the State of New Jersey; that it is

engaged in the manufacture and sale of leather, having its principal place of business at 17 East Street, Boston, Massachusetts. During the years in controversy the claim-
[fol. 2] ant's principal place of business was located at 92 Cliff Street, New York City, State of New York.

II

That this action is for the recovery of income and profits taxes erroneously and illegally assessed against and collected from the claimant by the defendant, and arises under the Revenue Act of 1918 (40 Stat. 1057).

III

That no action has been taken upon this claim before Congress, any Department of the Government or any court other than as herein set forth; that no person other than the claimant is the owner thereof or interested therein; that no assignment or transfer of this claim, or any part thereof or interest therein has been made; that the claimant, its officers and stockholders have at all times borne true allegiance to the Government of the United States and have not, in any way, voluntarily aided, abetted or given encouragement to rebellion against said Government; that the claimant is a citizen of the United States.

IV

The claimant duly filed with the Collector of Internal Revenue for the Second District of New York, New York City, New York, income and profits tax returns on the basis of calendar year returns from 1918 to 1921, inclusive, on the following dates, showing taxes due as follows:

Calendar year	1918,	$1,151,436.08,	filed July 14, 1919.
" "	1919,	1,187,444.67,	" May 15, 1920.
" "	1920,	None,	" May 21, 1921.
" "	1921,	None,	"

[fol. 3] In accordance with Section 250 of the Revenue Act of 1918, claimant paid said tax assessments to the Collector of Internal Revenue as aforesaid on the following dates and in amounts set forth:

March 14, 1919	$275,000.00
June 14, 1919	275,000.00
July 31, 1919	25,718.04

September 13, 1919	287,859.02
December 13, 1919	287,859.02
February 29, 1924	94,835.16
Total 1918 calendar year tax	$1,246,271.24
March 13, 1920	$300,000.00
June 14, 1920	293,722.34
September 14, 1920	296,861.16
December 15, 1920	222,925.91
Total 1919 calendar year tax	$1,113,509.41

The claimant's books of accounts and corporate records since the date of incorporation had been kept on the basis of a fiscal year ending June 30th.

The claimant received a letter from the Commissioner of Internal Revenue dated November 18, 1925, ordering amended fiscal year returns to be filed, in accordance with Section 212 (b) of the Revenue Act of 1918, copy of which letter is attached hereto and made a part hereof and marked Exhibit A.

The claimant in fulfillment of the order of the Commissioner, prepared and filed fiscal period returns amending the original calendar year returns and showing assessable taxes as follows:

Fiscal year return ended June 30, 1919—$858,205.88, filed January 22, 1926.

Fiscal year return ended June 30, 1920—None, filed January 22, 1926.

Proper waivers were duly filed by the claimant for the tax years 1919, 1920 and 1921.

The claimant received a letter from the Commissioner of Internal Revenue, dated January 6, 1927, requesting an [fol. 4] amended fiscal period return for the taxable period ended June 30, 1918, copy of which letter is attached hereto and made a part hereof and marked Exhibit B.

The claimant prepared and filed (on or about January 31, 1927) amended fiscal period return from January 1, 1918, to June 30, 1918, showing assessable taxes of $544,415.86.

Proper refund claims were prepared and filed covering the overpayments of taxes in excess of those properly due

under the fiscal period returns required by the Commissioner as follows:

Refund claim for 1918—$78,719.76—filed January 31, 1927.
" " " 1919—321,684.45— " January 16, 1926.
" " " 1920—556,754.72— " January 22, 1926.

V

The Commissioner of Internal Revenue has determined the tax assessable on the basis of fiscal year returns as follows:

Fiscal period January 1, 1918, to June 30, 1918	$708,068.47
Fiscal year ending June 30, 1919	896,314.83
Fiscal year ending June 30, 1920	None.

The Commissioner of Internal Revenue in letter dated August 10, 1927, notified the claimant that its claim for refund of $556,754.72 for the fiscal year ending June 30, 1920, was rejected for the reason *that* "that the total tax assessed for the calendar year 1919 has been applied against the tax liability for the fiscal year ended June 30, 1919," copy of which letter is attached hereto and made a part hereof and marked Exhibit C.

The Commissioner of Internal Revenue in the final audit of the returns for the fiscal periods ending June 30, 1918, June 30, 1919, and June 30, 1920, credited against the tax assessable for each respective period the tax which had been previously assessed for the calendar year as follows:

[fol. 5] Fiscal period January 1, 1918, to June 30, 1918—

Total tax assessable	$708,068.47
Tax previously assessed (cal. year 1918)	1,246,271.24
Overassessment	538,202.77

Fiscal year ending June 30, 1919—

Total tax assessable	$896,314.83
Tax previously assessed (cal. year 1919)	1,187,444.67
Overassessment	291,129.84

Fiscal year ending June 30, 1920—

Total tax assessable	None.
Tax previously assessed (cal. year 1920)	None.

VI

The Commissioner of Internal Revenue in applying the calendar year taxes against the tax liability as determined upon the fiscal year basis has credited the entire tax paid for the 12 months for the calendar year 1918 against the six months fiscal period from January 1, 1918, to June 30, 1918. The taxes paid for the calendar year 1919 have been credited in their entirety against the fiscal year ended June 30, 1919, which included six months income of the calendar year of 1918 and six months income of the calendar year 1919. Taxes had been previously paid upon this income partially in 1918 and 1919 calendar year returns. The Commissioner of Internal Revenue made the same adjustment in the same manner for the fiscal year ended June 30, 1920.

VII

That the claimant protested to the Commissioner of Internal Revenue against his allocation and application of credit for taxes previously assessed and paid on a calendar year basis for the years 1918, 1919, 1920 and 1921, as against the taxes properly assessable on fiscal year returns for the taxable periods January 1, 1918, to June 30, 1918, July 1, 1918, to June 30, 1919, July 1, 1919, to June 30, 1920.

By reason of the allocation and adjustment adopted by the Commissioner of Internal Revenue $443,367.61 already [fol. 6] computed and established as an overpayment, due the claimant has been refused as being barred by the Statute of Limitations.

VIII

Claimant is advised by its counsel, believes, and therefore avers that under the terms of the Revenue Act of 1918 and subsequent acts, more particularly Sec. 284 (a) of the Revenue Act of 1926, it is entitled to receive the amount of $556,754.72 with interest, applying the method of allocation and adjustment of credit for taxes paid to the fiscal years 1918 to 1920, inclusive, as intended by Congress, and the refusal of the Commissioner of Internal Revenue to refund this amount is unlawful and not in accordance with the provisions of the existing Internal Revenue laws.

IX

Claimant avers that the true method of allocation and adjustment should be determined by applying against the total tax assessable for each fiscal year 6/12 of the tax for the preceding calendar year and 6/12 of the tax assessed for the calendar year within which the fiscal year ends. This method is illustrated by the claimant's computation submitted herewith and made a part hereof and marked Exhibit D. By this method 6/12ths of the tax shown on the basis of the calendar year 1919, for instance, should be credited to the fiscal year 1919, since 6/12ths of the calendar year 1919 is in the fiscal year 1919. The other 6/12ths should be credited to the fiscal year 1920 since 6/12ths of the calendar year 1919 is in the fiscal year 1920.

[fol. 7]

X

Claimant avers that there is justly due and owing to it from the United States on account of matters hereinbefore set forth, the sum of $556,754.72; that it is the sole owner of the claim herein sued upon and that no assignment or transfer of the claim, or any part thereof or any interest therein, has been made.

Wherefore claimant prays judgment against the United States for $556,754.72 with interest thereon.

American Hide and Leather Company, by Carl F. Danner, President.

Duly sworn to by Carl F. Danner. Jurat omitted in printing.

[fol. 8]

EXHIBIT "A" TO PETITION

Treasury Department, Washington

Office of Commissioner of Internal Revenue

IT:CR.Af. JWK.

Nov. 18, 1925.

American Hide and Leather Company, 11-17 East Street, Boston, Massachusetts.

SIRS: Reference is made to your letter dated October 21, 1925, enclosing affidavit relative to your accounting period

for the taxable year 1918 and subsequent years.

Relative to your request for an official ruling as to the proper basis upon which your returns for 1918 and subsequent years should have been filed, you are respectfully referred to Article 25 of Regulations 45 which reads in part as follows:

"A taxpayer having an existing accounting period which is a fiscal year within the meaning of the statute not only needs no permission to make his return on the basis of such a taxable year, but is required to do so, regardless of the former basis of rendering returns. * * * The first return under the present statute of a taxpayer who has heretofore made return on a basis different*ce* from his accounting period will necessarily overlap his next previous return."

[fol. 9] For the method of adjusting the tax in such a case, see Section 205 of the Revenue Act of 1918 as defined by Articles 1621 to 1625 of Regulations 45.

It is evident from the information contained in your affidavit that your returns for 1918 and subsequent years should have been filed on the basis of fiscal years ended June 30. Since no waivers were filed for the calendar year 1918, the Statute of Limitations precludes the further adjustment of your tax liability for that year. Inasmuch as a waiver has been filed for 1919, the amended return for that year should cover the full fiscal year from July 1, 1918, to June 30, 1919, and the tax computed in accordance with Article 1625 of Regulations 45 except that the 1918 portion of the tax should be eliminated.

Since the change in your accounting period to a calendar year basis was made without the approval of the Commissioner of Internal Revenue, as required in Article 26 of Regulations 45, 62 and 65, amended returns should also be filed for the years 1920 to 1925, inclusive, on the basis of fiscal years ended June 30 of each year.

In view of the delay occasioned by the filing of amended returns in the audit of your returns for 1920 to 1921, waivers should be filed extending the period of limitation on those years to December 31, 1926, for which forms are enclosed.

In the event of further correspondence relative to this matter, reference should be made to IT:CR: Af—JWK.

Respectfully, (Signed) C. R. Nash, Assistant to the Commissioner.

Enclosures: 4 Waiver Forms.

[fol. 10] EXHIBIT "B" TO PETITION

Treasury Department, Washington

Office of Commissioner of Internal Revenue

IT:CR:D. PHR.

Jan. 6, 1927.

American Hide and Leather Company, 11-17 East Street, Boston, Massachusetts.

SIRS: Reference is made to Bureau letter dated November 18, 1925, in reply to your letter and affidavit dated October 21, 1925, relative to your accounting period and returns required for 1918 and subsequent years.

In this connection, you are advised that Article 25 of Regulations 45 provides that, "except in the cases of a return for the taxable year 1918 and of a first return for income tax the taxpayer shall make his return on the basis (fiscal or calendar) upon which he made his return for the taxable year immediately preceding, unless * * * he has changed the basis of computing his income." Accordingly, the 1918 and 1919 returns, in your case, must be filed on the same basis.

Article 25 of Regulations 45 further provides that, "the taxpayer having an existing accounting period, which is a fiscal year within the meaning of the statute not only needs no permission to make his return on the basis of such a taxable year, but is required to do so, regardless of the former basis of rendering returns.". This provision applies to 1918 as well as 1919.

[fol. 11] Therefore, notwithstanding the waiver status for the year 1918, as referred to in the above-mentioned Bureau letter, since no return has been filed for the year ended June 30, 1918, the recognized accounting period of your

company, the Bureau holds that your case comes within the provision of Section 278(a) of the Revenue Act of 1926. As set forth in Article 1271, Paragraph 5, of Regulations 69, "in the event that the taxpayer fails to file the return, the amount of tax due may be assessed at any time after the date prescribed for filing the return."

Since the 1918 case is still open and not subject to the inhibition of the bar as provided by Section 277 of the Revenue Act of 1926, it is requested that an amended return for the fiscal year beginning July 1, 1917, and ending June 30, 1918, be filed at your earliest convenience, in order that the revised audit necessitated by the change of basis on which your income is reported, may be completed as soon as practicable.

Further correspondence should be referred to IT:CR:D—PHR.

Respectfully, C. R. Nash, Assistant to the Commissioner, by (Signed) H. B. Robinson, Head of Division.

[fol. 12] EXHIBIT "C" TO PETITION

Treasury Department, Washington

Office of Commissioner of Internal Revenue

IT:CR:D. PHR.

Aug. 10, 1927.

American Hide and Leather Company, 17 East Street, Boston, Mass.

SIRS: Your claims for the refund of $556,754.72 and $519,787.07, income and profits taxes for the fiscal year ended June 30, 1920, have been examined and are hereby rejected for the reason that the total tax assessed for the calendar year 1919 has been applied against the tax liability for the fiscal year ended June 30, 1919.

The basis of the above results are shown in schedule attached to a certificate of over-assessment for the fiscal year 1919.

An audit of your return for the fiscal year ended June 30, 1920, therefore, indicates no change in your tax liability for that year.

The claims will, therefore, be rejected.

This rejection will officially appear on the next schedule to be approved by the Commissioner.

Respectfully, C. R. Nash, Assistant to the Commissioner, by (Signed) H. B. Robinson, Head of Division.

[fol. 13] EXHIBIT "D" TO PETITION

American Hide and Leather Company, 17 East Street, Boston, Massachusetts

Computation of Credit for Taxes Paid

Fiscal Period January 1, 1918, to June 30, 1918—	
Total tax assessable (amended return)	$544,415.86
Credit for taxes previously paid: (6/12 cal. year 1918)	623,135.62
Overassessment	$78,719.76
Fiscal year ended June 30, 1919—	
Total tax assessable (amended return)	$858,205.88
Credit for tax previously paid:	
(6/12 calendar year 1918, $623,135.62)	
(6/12 calendar year 1919, 556,754.71)	1,179,890.33
Overassessment	$321,684.45
Fiscal year ended June 30, 1920—	
Total tax assessable (amended return)	None.
Credit for taxes previously paid:	
(6/12 calendar year 1919, $556,754.72)	
(6/12 calendar year 1920, None.)	$556,754.72
Overassessment	$556,754.72

[fol. 14] II. GENERAL TRAVERSE—Filed August 25, 1928

And now comes the Attorney General, on behalf of the United States, and answering the petition of the plaintiff

herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Herman J. Galloway, Assistant Attorney General.

D. E. R.

III. Argument and Submission of Case

On March 4, 1930, this case was argued and sumitted on merits by Mr. William E. Hayes, for plaintiff, and by Mr. Henry A. Cox, for defendant.

[fol. 15] **Special Findings of Fact, Conclusion of Law, and Opinion of the Court by Littleton, J.**—Filed November 3, 1930

Mr. William E. Hayes, for plaintiff.

Hayes & Hayes were on the brief.

Mr. H. A. Cox, with whom was Mr. Assistant Attorney General Charles B. Rugg, and Mr. C. J. Mattson for defendant.

Mr. Charles F. Kincheloe was on the brief.

This suit is for the recovery of $556,754.72, alleged to represent an overpayment of income and profits tax for the fiscal year ended June 30, 1920, with interest.

Plaintiff filed calendar-year returns for 1918, 1919, and 1920 when it should have filed returns for a fiscal year ending June 30, and in auditing these returns and adjusting plaintiff's tax liability the Commissioner of Internal Revenue treated the tax paid and assessed on the calendar-year returns as a tax paid for the fiscal year ending within the calendar year and applied such tax in satisfaction of the tax finally determined to be due for such fiscal year. In so doing the commissioner determined certain overassessments and overpayments. It developed that a refund of $443,367.61 paid on the calendar year 1918 return was barred by the statute of limitation.

Plaintiff claims that when the commissioner came to audit its returns, which were filed on an erroneous basis, he should have treated the tax paid on each of the calendar-year returns as a payment on account of the tax for the periods falling within the fiscal year ending June 30 in pro-

portion to the number of months falling within such fiscal year. Upon the basis of this contention the plaintiff claims that when it filed an erroneous calendar year 1919 return, six-twelfths or $556,754.72, of the tax paid thereon was a tax paid for the first six months of the fiscal year ending June 30, 1920, and that when it was found that plaintiff had a loss for the fiscal year ended June 30, 1920, this amount represented an overpayment for that year, which should have been refunded.

Special Findings of Fact

1. Plaintiff, a New Jersey corporation with principal place of business at New York, filed with the collector for the second district of New York on July 15, 1919, an income and profits tax return for the calendar year 1918 showing a taxable net income of $3,265,682.29 and a total tax of $1,151,436.08, which was assessed and was paid in four in- [fol. 16] stallments of $275,000 on March 20, 1919, and June 20, 1919, $25,718.04 on July 15, 1919, and $287,859.02 on September 16 and December 15, 1919.

2. May 15, 1920, it filed with the collector an income and profits tax return for the calendar year 1919 showing a net income of $5,193,011.16 and a total tax of $1,187,444.67, which was duly assessed.

December 15, 1920, plaintiff filed with the collector an amended income and profits tax return for the calendar year 1919 showing a net taxable income of $5,032,282.33 and a total tax of $1,113,509.41.

On the same date it filed with the collector a claim for abatement of $73,935.26, being the difference between the total tax shown on the original return and that shown on the amended return. The grounds upon which the abatement was claimed was a reduction in the inventory of December 31, 1919, due to an alleged loss by thefts and a decrease in market value. $1,113,509.41 of the total tax for the calendar year 1919 was paid in four installments of $300,000 on March 18, 1920, $293,722.34 on June 26, 1920, $296,861.16 on September 15, 1920, and $222,925.91 on December 24, 1920.

3. May 12, 1921, plaintiff filed an income and profits tax return for the calendar year 1920 showing a net loss of $7,982,322.34 and no tax due for said year.

4. April 30, 1920, a deputy commissioner of internal revenue notified plaintiff by letter that an examination of its income and profits tax returns for the calendar years 1917 and 1918 supported b- a field audit re-ulted in an additional tax due of $331,886.56 for 1917 and $301,183.38 for 1918. The additional tax for 1918 was assessed on the August, 1920, list and represented the difference between the amount of $1,452,619.46 determined as the correct tax for the calendar year 1918 and the amount previously assessed, as hereinbefore set forth. November 3, 1926, plaintiff filed a claim for the abatement of the entire additional assessment of $301,183.38 for 1918. October 30, 1922, the deputy commissioner of internal revenue notified plaintiff by letter that a consideration of the facts submitted by it in support of its claim for abatement of the additional tax determined and assessed for 1918 resulted in a further additional tax of $178,840.51 for 1917 and $425,643.35 for 1918. This additional tax of $425,643.35 for 1918 was not assessed.

5. September 15, 1923, plaintiff filed with the collector a claim for refund of $100,000, or such greater amount as might be legally refundable of income and profits tax paid for the period from January 1, 1918, to December 31, 1918. October 5, 1923, the plaintiff filed a claim for refund of $1,113,509.41 for the calendar year 1919.

6. January 12, 1924, the Deputy Commissioner of Internal Revenue notified the plaintiff that a reexamination of its returns for the calendar years 1909 to 1918, inclusive, had been made and that an overassessment of $206,348.22 had been determined for the calender year 1918, computed as follows:

Total tax		$1,246,271.24
Previously assessed:		
Original return	$1,151,436.08	
Additional June, 1920	301,183.38	
		1,452,619.46
Overassessment		206,348.22

[fol. 17] 7. February 18, 1924, the Commissioner of Internal Revenue issued a certificate of overassessment of $206,348.22 for 1918. With the issuance of this certificate

the claim for abatement of $301,183.38, referred to in finding 4, was allowed for the amount of the overassessment and rejected for the balance of $94,835.16. Plaintiff paid the last-mentioned amount to the collector under protest on March 1, 1924.

8. September 25, 1924, the plaintiff and the commissioner consented in writing to a determination, assessment, and collection of the tax due under any return made for the year 1919 until September 25, 1925. July 28, 1925, plaintiff and the commissioner signed a written consent in which plaintiff waived the time for making any assessment of the tax due under any return made for the year 1919 until December 31, 1926. This consent also provided for a further extension of the period in the event of an appeal to the United States Board of Tax Appeals. December 15, 1926, plaintiff and the commissioner signed a consent whereby plaintiff waived the time for making assessment of the tax due under any return made for the years 1919 and 1920 until December 31, 1927.

9. June 24, 1926, plaintiff executed and filed with the collector of internal revenue a waiver consenting to collection by distraint or proceedings in court of the tax assessed against it for the year 1919 until December 31, 1926. Plaintiff also executed and filed with the collector an undated waiver consenting to collection by distraint or proceedings in court of the tax in the amount of $73,955.26 for 1919 assessed in March, 1920.

10. On June 5, 1928, plaintiff filed with the collector at New York a consent dated June 1, 1928, whereby it agreed to the assessment of any tax due under any return made for the year and period 1918 until December 31, 1918. This consent also provided for a further extension by the mailing of a notice of deficiency and an appeal to the United States Board of Tax Appeals. This consent was signed by the plaintiff and the commissioner.

11. September 10, 1924, plaintiff filed with the collector a claim for refund of $226,064.74 of the tax paid for the calendar year 1919.

12. September 15, 1925, plaintiff filed claim for refund of $519,787.07, or such greater amount as might be legally

refundable, of the tax claimed to have been paid for the period June 30, 1919, to June 30, 1920.

13. January 22, 1926, plaintiff filed an amended income and profits tax return for the fiscal year ended June 30, 1919, reporting thereon a net income of $3,452,009.96 and showing a total tax of $858,205.88. Upon this return plaintiff computed a refund due of $321,684.45 by allocating one-half of the tax assessed on the 1918 calendar year return and one-half of the tax assessed on the calendar year 1919 return, and one-half of the amount of the outstanding claim for abatement to the fiscal year beginning July 1, 1918, and ending June 30, 1919, as follows:

Total tax		$858,205.88
Assessed 1918, $1,246,271.24 for six months	$623,135.62	
Assessed for 1919, $1,187,444.67 for six months	593,722.34	
		1,216,857.96
Overassessment		358,652.08
Claim for abatement outstanding	73,935.26	
Six months		36,967.63
Refund due		321,684.45

[fol. 18] 14. On the same date, January 22, 1926, plaintiff filed an amended return for the fiscal year ended June 30, 1920, reporting thereon a net loss of $1,739,036.96. Upon this return plaintiff computed a refund due of $556,754.72 by allocating one-half of the tax reported and assessed for the fiscal year 1919 to the fiscal year beginning July 1, 1919, and ending June 30, 1920, as follows:

Total tax due	None.	
Previously assessed:		
½ tax assessed 1919 of $1,187,444.69		$593,722.35
½ tax assessed 1920	None.	
Overassessment		593,722.35
½ claim for abatement outstanding, $73,935.26		36,967.63
Refund due		556,754.72

15. January 22, 1926, plaintiff filed claims for refund of $321,684.45 for the fiscal year ended June 30, 1919, and $556,754.72 for the fiscal year ended June 30, 1920, based upon the aforementioned amended returns for these fiscal years.

16. February 1, 1927, plaintiff filed a claim for refund of $78,719.76, or such greater amount as might be legally refundable, for the fiscal period January 1, 1918, to June 30, 1918. Attached to this claim were various schedules designated by plaintiff as an "Amended Return, Fiscal Period January 1, 1918, to June 30, 1918." Upon this claim and the schedules thereto attached plaintiff computed a refund due of $78,719.76 by allocating six-twelfths of the original tax returned, assessed, and paid, and the additional assessment, to the fiscal year ended June 30, 1918, as follows:

Total tax due		$544,415.86
Previously assessed:		
Original return $1,151,438.08 × 6/12	$575,719.04	
Add'l tax assessed $94,833.16 × 6/12	47,416.58	
		623,135.62
Refund due		78,719.76

17. The Commissioner of Internal Revenue having determined that plaintiff's books were kept on the fiscal year basis and that its returns should have been filed on the basis of a fiscal year ending June 30, applied the total tax assessed for the calendar year 1919 in satisfaction of the tax of plaintiff for the fiscal year ended June 30, 1919, and determined that no overpayment had been made for the fiscal year ended June 30, 1920. He, therefore, on August 10, 1927, rejected plaintiff's claims for refund of $556,754.72 and $519,787.07 for the fiscal year July 1, 1919, to June 30, 1920.

18. June 19, 1928, plaintiff filed a claim for refund of $538,202.77, alleged to have been overpaid for the period January 1, 1918, to June 30, 1918.

19. In his final decision in respect of plaintiff's tax liability for the taxable periods January 1, 1918, to June 30,

1918, and July 1, 1918, to June 30, 1919, the commissioner applied the total tax assessed on the calendar year 1918 return in satisfaction of the correct tax liability determined by him for the period beginning January 1, 1918, and ending June 30, 1918, and the total tax assessed on the calendar year 1919 return in satisfaction of the correct tax for the fiscal year beginning July 1, 1918, and ending June 30, [fol. 19] 1919. The Commissioner of Internal Revenue issued a certificate of overassessment setting forth the details of the computation of his final decision, as follows:

Previously assessed:	
Original return (406540)	$1,151,436.08
Additional, August, 1920, p. 95, L. 1	301,183.38
Total assessed	1,452,619.46
Reduced, February, 1924	206,348.22
Net assessment	1,246,271.24
Correct tax liability	708,068.47
Total overassessment	538,202.77
Amount barred by stat. of limitations	443,367.61
Amount subject to refund	94,835.16

20. No refund was made of any portion of the overassessment of $443,367.61 because that amount was barred by the statute of limitations, but on August 17, 1928, the commissioner refunded $94,835.16, together with interest thereon, of $25,302.80, being the difference between the total overassessment determined by him for the fiscal period January 1, 1918, to June 30, 1918, and the amount barred by the statute of limitations.

The commissioner issued a certificate of overassessment for the fiscal year ended June 30, 1919, showing the details of his computation by which he arrived at his final decision, as follows:

Tax assessed, calendar year 1919:	
Account #40809 (original)	$887,444.67
Account #408089 (tentative)	300,000.00

Total assessment	$1,187,444.67
Correct tax liability	896,314.83
Overassessment	291,129.84
Credited to abatement claim	73,935.26
Refunded	217,194.58

21. May 17, 1928, the commissioner refunded the amount of $217,194.58, together with interest thereon of $86,877.83. For the fiscal year ended June 30, 1920, the commissioner followed the same method and made the same adjustment for that year as is shown above in respect to the fiscal years ending June 30, 1918 and 1919.

22. At all times during the periods involved in this suit plaintiff kept its books on the basis of a fiscal year ending June 30 and kept its books of account and made its tax returns on an accrual basis.

Conclusion of Law

Upon the foregoing special findings of fact, which are made part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and its petition is therefore dismissed.

Judgment is rendered against plaintiff for the cost of printing the record herein, the amount thereof to be ascertained by the clerk and collected by him according to law.

[fol. 20]

Opinion

Littleton, Judge, delivered the opinion of the court:

Plaintiff brings this suit to recover $556,754.72, alleged to represent an overpayment of income and profits tax for the last six months of the calendar year 1919, being the first six months of the fiscal taxable year beginning July 1, 1919, and ending June 30, 1920.

As shown by the facts, the commissioner held that the erroneous calendar year returns were returns under the statute for the fiscal year ending within such calendar year and treated the tax assessed and paid on such calendar year returns as having been paid on a return for such fiscal year. As a result, the Commissioner of Internal Revenue held that there had been no overpayment for the period

claimed by plaintiff. The result of the commissioner's determination upon audit of the returns for 1918, 1919, and 1920 was to show an overassessment of $538,202.77 for the six-months period ending June 30, 1918. Of this amount the refund of $443,367.61 was barred by the statute of limitation and the balance of $94,835.16 was duly refunded by the commissioner with interest.

Plaintiff contends that one-half of the tax paid under each of the erroneous calendar year returns must be regarded as having been paid for each of the two fiscal years involved in such erroneous return. It therefore claims that six-twelfths of the tax paid under the erroneous calendar year 1918 return should be treated as having been paid for the fiscal period ending June 30, 1918, and six-twelfths should be treated as a tax paid for the fiscal year ending June 30, 1919, and that the tax collected on the erroneous calendar year 1919 return should be similarly applied.

Defendant contends that the tax paid under any such erroneous return must be treated as a tax paid for the correct taxable period or year for which the return should have been filed and the tax paid, and that any overpayment should be refunded or credited against any tax due for another taxable period in the usual and ordinary manner expressly provided by statute in respect of overpayments.

The question for decision, therefore, is whether a taxpayer having erroneously filed a return or returns and paid the tax thereunder for a period other than that required by law is entitled to have the tax so paid apportioned between the two taxable years involved upon the basis of the respective number of months concerned which fall within each of the correct taxable years.

This question has been fully considered and discussed by the court in P. L. Mann v. United States, J-201, this date decided. For the reasons therein set forth we are of opinion that plaintiff is not entitled to recover any amount as an overpayment of tax for the fiscal year ending June 30, 1920.

The petition must therefore be dismissed. It is so ordered.

Williams, Judge; Green, Judge; and Booth, Chief Justice; concur.

Whaley, Judge, did not hear this case and took no part in the decision thereof.

[fol. 21] V. JUDGMENT

At a Court of Claims held in the City of Washington on the 3rd day of November, A. D., 1930, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and its petition is therefore dismissed.

VI. PROCEEDINGS AFTER ENTRY OF JUDGMENT

On December 31, 1930, the plaintiff filed a motion for a new trial.

On February 16, 1931, the plaintiff's motion for new trial was argued and submitted by Messrs. George E. Hamilton and William E. Hayes, for plaintiff, and by Mr. George H. Foster, for defendant.

On April 6, 1931, the plaintiff's motion for new trial was overruled, with an opinion by Littleton, J., which is as follows:

[fol. 22] VII. OPINION OF THE COURT BY LITTLETON, J., ON PLAINTIFF'S MOTION FOR NEW TRIAL—Filed April 6, 1931

Mr. George E. Hamilton and Mr. Wm. E. Hayes for the plaintiff.

Mr. George H. Foster, with whom was Mr. Assistant Attorney General Charles B. Rugg, for the defendant.

Memorandum

LITTLETON, Judge:

Plaintiff's petition was dismissed by opinion rendered November 3, 1930. Thereafter plaintiff filed a motion for a new trial and brief in support thereof.

It is insisted, first, that "the court erred in treating the calendar year 1919 statement of income as a statutory return for the fiscal year ended June 30, 1919," and secondly, that "the court erred in treating the tax paid on income of the twelve months' period ending December 31, 1919,

which period was not the taxable period, as if it were a payment made for a taxable year ending in such calendar year."

With respect to the first point the court held that when a taxpayer files a calendar-year return, when it should have filed a return for the fiscal year ending during such calendar year, such return, although on an erroneous basis, must be treated as a return under the statute, and it can only be treated as a return for a taxable period or year that has ended during the period covered by it.

On the second point the court decided that a tax assessed and paid on a return for a calendar year, when the true accounting period of the plaintiff was a fiscal year ending within that calendar year, must be regarded as having been assessed and paid for the fiscal taxable year ending within the year for which the return was filed, even although the taxpayer filed his return on the wrong basis.

In oral argument upon the motion for a new trial and in the brief in support thereof counsel for plaintiff contend that the calendar-year returns filed can not be regarded as returns under the statute for any purpose, since in neither form nor substance did they purport to contain the income for a fiscal year which was the taxpayer's annual accounting period and for which it was required by the statute to file returns. We can not concur in this contention. Except for the fact that plaintiff did not file sufficient and [fol. 23] timely claims for refund with respect to the tax paid on the calendar year 1918 return, there would be no basis whatever for the claimed overpayment for the fiscal year beginning July 1, 1919, and ending June 30, 1920, for the reason that had the commissioner not been prevented by the statute of limitation from refunding the entire overpayment determined for 1918, the plaintiff would have received the refund of all of the tax paid in excess of its correct tax liability for each of the fiscal years ended June 30, 1918, 1919, and 1920. The overpayment claimed by the plaintiff to have been made for the first six months of the fiscal year ended June 30, 1920, can only be supported by completely disregarding for all purposes the calendar-year returns filed and by treating each of them merely as a statement of income and deductions of the tax paid thereon as a tax for the first half

and the second half of plaintiff's fiscal taxable year. In other words, in order to bring the claimed overpayment within a period covered by a sufficient and timely claim for refund, one-half of the tax paid on each of the calendar year returns must be treated as an advance payment for the first six months of the fiscal year ending on June 30. We are of opinion, as pointed out in P. L. Mann v. United States, 44 Fed. (2d) 1005, that the calendar year returns must be treated as statutory returns for the fiscal year ending within the calendar year for which such returns were filed. The Commissioner of Internal Revenue correctly so held and adjusted the income, deductions, and the tax paid accordingly. Returns are not fatally defective merely because they do not include all of the income for the correct taxable period for which the returns should have been filed, or because they may include income which properly belongs in some other taxable period, or because the returns were made upon an erroneous basis. The treatment by the defendant of the calendar year returns as statutory returns for the taxable fiscal years ending within the calendar years for which such returns were improperly made for the purpose of assessment, collection, refunds, credits, and the statute of limitations was, in our opinion, a correct administration of the taxing act. The calendar year returns purported to and did cover a period recognized by the statute as a taxable year. The taxable year covered by each calendar year return did not include the entire taxable year of the plaintiff because its books were kept on a fiscal year basis. Each return was therefore made on an erroneous basis and included income and deductions of a portion of two of plaintiff's correct taxable years. When the commissioner came to audit the calendar year returns he discovered that the plaintiff was on a fiscal year basis and it was necessary for him to adjust the income returned, the deductions taken, and the tax paid to conform to the plaintiff's fiscal year. He did this by adjusting the income, deductions, and tax liability of the correct fiscal taxable year to the calendar-year returns covering the period in which the fiscal year ended. The commissioner would not have been justified in completely ignoring the calendar-year returns filed and in treating

the taxpayer as if it had never filed a return for any of the taxable years 1918 to 1920, inclusive. This conclusion is not inconsistent with Lucas v. Pilliod Lumber Co., 281 U. S. 245, where the taxpayer failed to sign and swear to a return. Nor is the case of Florsheim Brothers Drygoods Co., Ltd., v. United States, 280 U. S. 453, authority for the [fol. 24] contention of the plaintiff that calendar-year returns filed by a taxpayer keeping its books on the fiscal-year basis are without legal significance whatever and must be completely ignored. The Florsheim case involved the question whether a request for extension of time within which to file a return accompanied by an estimate of the total tax due for the year was a sufficient return to set in motion the statute of limitations. The holding of the court that such a document could not be considered a return under the statute can not be extended to include a complete calendar-year return filed by a taxpayer employing the fiscal-year basis of accounting.

We find no reason justifying a modification of the decision heretofore rendered. The motion for a new trial is, therefore, denied.

Whaley, Judge; Williams, Judge; Green, Judge; and Booth, Chief Justice, concur.

[fol. 25] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 35,844. Court of Claims. Term No. 922. American Hide and Leather Company, petitioner, vs. The United States. Petition for a writ of certiorari and exhibit thereto. Filed April 29, 1931. File No. 35,844.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1931

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1276)